

United States Court of Appeals

**FIFTH CIRCUIT
OFFICE OF THE CLERK**

LYLE W. CAYCE
CLERK

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July 20, 2022

Mr. Philip Devlin
Western District of Texas, Austin
United States District Court
501 W. 5th Street
Austin, TX 78701-0000

No. 18-50730 Whole Woman's Health v. Young
USDC No. 1:16-CV-1300

Dear Mr. Devlin,

Enclosed is a copy of the judgment issued as the mandate and a copy of the court's opinion.

Sincerely,

LYLE W. CAYCE, Clerk

Melissa Mattingly

By: Melissa V. Mattingly, Deputy Clerk
504-310-7719

CC:

Ms. Molly Rose Duane
Ms. Elaine Goldenberg
Ms. Autumn Chandra Katz
Ms. Beth Ellen Klusmann
Mrs. Susan J. Kohlmann
Mr. Joseph Alexander Lawrence
Mr. Darren McCarty
Ms. Jane Metcalf
Ms. Caroline Marie Sacerdote
Mr. Stuart Sarnoff
Mr. Saul B. Shapiro
Ms. Rupali Sharma
Ms. Stephanie Toti

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

June 28, 2022

Lyle W. Cayce
Clerk

No. 18-50730

WHOLE WOMAN'S HEALTH; BROOKSIDE WOMEN'S MEDICAL CENTER, P.A., DOING BUSINESS AS BROOKSIDE WOMEN'S HEALTH CENTER AND AUSTIN WOMEN'S HEALTH CENTER; LENDOL L. DAVIS, M.D.; ALAMO CITY SURGERY CENTER, P.L.L.C., DOING BUSINESS AS ALAMO WOMEN'S REPRODUCTIVE SERVICES; WHOLE WOMAN'S HEALTH ALLIANCE; DR. BHAVIK KUMAR,

Plaintiffs—Appellees,

versus

CECILE ERWIN YOUNG, EXECUTIVE COMMISSIONER OF THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION, IN HER OFFICIAL CAPACITY,

Defendant—Appellant.

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:16-CV-1300

Before BARKSDALE, STEWART, and COSTA, *Circuit Judges.*

PER CURIAM:

No. 18-50730

The district court enjoined Texas laws regulating the disposal of embryonic and fetal tissue remains. The state requires facilities performing abortions to dispose of these remains in one of four ways: “(1) interment”; (2) cremation; (3) incineration followed by interment; or (4) steam disinfection followed by interment. TEX. HEALTH & SAFETY CODE § 697.004(a). Ashes resulting from cremation or incineration “may be interred or scattered in any manner as authorized by law for human remains,” but “may not be placed in a landfill.” *Id.* § 697.004(b).

The district court assumed that the Texas laws further a legitimate state interest. *See Box v. Planned Parenthood of Ind. & Ky., Inc.*, 139 S. Ct. 1780, 1782 (2019) (holding that similar Indiana law was rationally related to a “legitimate interest in proper disposal of fetal remains” (quoting *Akron v. Akron Ctr. for Reprod. Health, Inc.*, 462 U.S. 416, 452 n.45 (1983))). The court then applied the “undue burden” standard of *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 843 (1992) (plurality opinion), *overruled by Dobbs v. Jackson Women’s Health Org.*, -- S. Ct. --, 2022 WL 2276808 (June 24, 2022). Under the *Casey* balancing approach, the district court concluded that “the challenged laws impose significant burdens on abortion access that far outweigh the benefits the challenged laws confer.” It thus held that the laws restricting the methods for disposal of fetal remains violate the Due Process Clause of the Fourteenth Amendment. It went on to hold that the laws also violate the Equal Protection Clause.

Last week, the Supreme Court overruled *Casey* and *Roe v. Wade*, 410 U.S. 113 (1973). *See Dobbs*, 2022 WL 2276808, at *43. *Dobbs* holds that “[t]he Constitution does not prohibit the citizens of each State from regulating or prohibiting abortion.” *Id.* Accordingly, we VACATE the injunction issued in this case and REMAND for further proceedings consistent with *Dobbs*.



United States Court of Appeals for the Fifth Circuit

Certified as a true copy and issued
as the mandate on Jul 20, 2022

Attest: *Lyle W. Cayce*
Clerk, U.S. Court of Appeals, Fifth Circuit

No. 18-50730

United States Court of Appeals
Fifth Circuit

FILED

June 28, 2022

Lyle W. Cayce
Clerk

WHOLE WOMAN'S HEALTH; BROOKSIDE WOMEN'S MEDICAL
CENTER, P.A., *doing business as* BROOKSIDE WOMEN'S HEALTH
CENTER AND AUSTIN WOMEN'S HEALTH CENTER; LENDOL L.
DAVIS, M.D.; ALAMO CITY SURGERY CENTER, P.L.L.C., *doing
business as* ALAMO WOMEN'S REPRODUCTIVE SERVICES; WHOLE
WOMAN'S HEALTH ALLIANCE; DR. BHAVIK KUMAR,

Plaintiffs—Appellees,

versus

CECILE ERWIN YOUNG, *Executive Commissioner of the Texas Health and
Human Services Commission, in her official capacity,*

Defendant—Appellant.

Appeal from the United States District Court
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Before BARKSDALE, STEWART, and COSTA, *Circuit Judges.*

J U D G M E N T

This cause was considered on the record on appeal and was argued by
counsel.

No. 18-50730

IT IS ORDERED and ADJUDGED that the judgment of the District Court is VACATED and REMANDED to the District Court for further proceedings in accordance with the opinion of this Court.

IT IS FURTHER ORDERED that plaintiffs-appellees pay to defendant-appellant the costs on appeal to be taxed by the Clerk of this Court.